

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

American Re-Insurance Company; American : Civil Action No. 05-11840-MLW
United Life Insurance Company; Dorinco :
Reinsurance Company; First Allmerica :
Financial Life Insurance Company; Guardian :
Life Insurance Company of America; Hartford :
Life Insurance Company; Houston Casualty :
Company; John Hancock Life Insurance :
Company (U.S.A.); Insurance Corporation of :
Hannover; Monumental Life Insurance :
Company; Pan American Life Insurance :
Company; Phoenix Life Insurance Company; :
Reliance Standard Life Insurance Company; :
Reliastar Life Insurance Company; Sun Life :
Assurance Company of Canada; Swiss Re Life :
& Health America; and Transamerica :
Occidental Life Insurance Company, :
Plaintiffs, :
v. :
American International Group, Inc. and :
Trenwick America Reinsurance Corporation, :
Defendants. :

PLAINTIFFS' RENEWED MOTION FOR REMAND
TO THE SUPERIOR COURT OF MASSACHUSETTS

On December 30, 2005, Plaintiffs American Re-Insurance Company, *et al.*, ("Plaintiffs") filed with the Court and caused to be served upon Defendants American International Group, Inc. ("AIG Inc.") and Trenwick America Reinsurance Corporation ("Trenwick") an Amended Complaint in this action pursuant to the amendment as a matter of course provision of Fed. R. Civ. P. 15(a). The underlying action was initiated in July 2005 in the Superior Court of Massachusetts, in and for Suffolk County, Business Litigation Section (the "Massachusetts Superior Court"), removed to this Court by the

Defendants on September 9, 2005, and is the subject of a pending motion to remand on grounds of lack of subject matter jurisdiction filed by Plaintiffs on October 13, 2005 and fully briefed before the Court.

The Amended Complaint (a) clarifies Plaintiffs' allegations with respect to actions undertaken by defendant AIG Inc. in its own right and/or on its own behalf; (b) adds new allegations based on information derived from the investigation of AIG Inc. by the Attorney General of the State of New York as set forth in *The People of the State of New York v. American International Group, Inc. et al.*, filed in the Supreme Court of the State of New York, County of New York, on May 26, 2005, and (c) asserts a new cause of action in conversion against AIG Inc. and Trenwick. This amendment is proper and timely under Fed. R. Civ. P. 15(a) as no responsive pleading has been served by either Defendant in this action.

In light of the Amended Complaint, Plaintiffs respectfully renew their motion before this Court pursuant to 28 U.S.C. §1447(c), for an Order remanding this action to the Massachusetts Superior Court, on grounds that federal subject matter jurisdiction is lacking under 9 U.S.C. §203 because the parties named in this litigation have not entered into an agreement to arbitrate their dispute. *See, Intergen N.V. v. Grina*, 344 F.3d 134, 140 (1st Cir. 2003) (affirming denial of defendants' motion to compel arbitration and remanding to trial court for reconsideration of plaintiffs' renewed motion to remand, all on basis of allegations in complaint amended by plaintiffs as of right during pendency of remand motion). Plaintiffs herein filed the Amended Complaint prior to the issuance of any substantive ruling addressed to the original Complaint. In such circumstance, an amended complaint supersedes the original complaint, and facts that are neither repeated

nor otherwise incorporated into the amended complaint no longer bind the pleader. *Id.* at 145. Issues on motion to remand and as to arbitrability of claims are to be determined by the Court on the pleadings of the Amended Complaint. *Id.* at 145, 150.

In support of this renewed motion, Plaintiffs rely on Plaintiffs' Memorandum of Law and Reply Memorandum of Law in Support of Motion to Remand, filed October 13, 2005 and December 14, 2005 respectively, and Plaintiffs' Memorandum in Opposition to Defendants' Motions for Stay, filed October 14, 2005.

RENEWED REQUEST FOR HEARING

Pursuant to Local District Court Rule 7.1(D), Plaintiffs renew their request that the Court schedule a hearing with respect to remand of this action as oral argument will be of assistance to the Court in resolving this matter.

By their attorneys,

/s/Steven L. Schreckinger

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Dated: January 5, 2005

L.R. 7.1 CERTIFICATION

I hereby certify that on January 4, 2005, I conferred by telephone with counsel for the defendants and attempted in good faith to resolve or narrow the issue raised in the above motion, and was unable to do so.

/s/Kathy L. McFarland

Kathy L. McFarland

CERTIFICATE OF SERVICE

I, Steven L. Schreckinger, counsel for Plaintiffs American Reinsurance Company, *et al.*, hereby certify that on January 5, 2005, I caused a copy of the foregoing document to be served by electronic means on counsel of record for the defendants.

/s/Steven L. Schreckinger

Steven L. Schreckinger